



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FF

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and a rent reduction. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be cancelled?
2. Has the tenant established an entitlement to a rent reduction for repairs or services or facilities not provided?

Background and Evidence

Under a verbal tenancy agreement that commenced February 2011 the tenant is required to pay rent of \$350.00 on the 1st day of every month. The tenant did not pay a security deposit. The tenant did not pay rent when due for June or July 2011 and on July 4, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates that \$700.00 in rent was outstanding.

The tenant submitted that he tried to pay the landlord \$700.00 with a Money Order on July 7, 2011 but that the landlord refused to accept payment. The landlord submitted that the tenant presented her with an "Intent to Rent" form for income assistance but she refused to sign it because he was already behind in rent. The landlord stated that the tenant told her he had a money order for \$700.00 but he never presented it to her. The tenant claimed he had a copy of a Money Order to support his position but did not submit it as evidence for this proceeding.

In making this application, the tenant indicated he is seeking authorization to reduce rent otherwise payable due to lack of a fridge for two months and insufficient heat. The tenant testified that in early May 2011 the fridge stopped working and in early June 2011 the landlord provided him with a bar fridge. The tenant lost approximately \$150.00

worth of meat as a result of the fridge not working. The landlord finally supplied him with a regular size fridge July 25, 2011 but it was mouldy. With respect to insufficient heat, the tenant stated that he was provided one portable heater and after complaining about lack of heat the landlord supplied him with a second portable heater. The tenant then purchased two more heaters on his own.

During the hearing the tenant stated that other issues involved a hot water tank that runs out of water quickly and insufficient heat in the unit.

The landlord responded to the tenant's submissions by stating she did not know the hot water tank was not working properly because the tenant had not complained about it. Nor did the landlord realize there was insufficient heat in the unit since the tenant did not complain after she provided a second heater. Further, the tenant advised her at the end of May 2011 that his fridge stopped working and she supplied him with a bar fridge shortly thereafter until a new fridge could be ordered. The landlord received the new fridge July 4, 2011 but did not install it until later in July because she thought the tenant would be moving out.

The landlord indicated she was willing to continue the tenancy if the tenant would pay the rent due to her; otherwise, she wished to regain possession of the rental unit by August 14, 2011.

I was provided no documentary evidence by either party with respect to this application. After hearing from the parties, I informed the tenant I would be dismissing his request to cancel the Notice, at which time he indicated he had a witness with him that would attest to the tenant's attempt to pay rent on July 7, 2011. I refused to hear from the witness had been listening to the tenant's testimony and the witness' presence had not been made known to me at the outset of the hearing.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under the terms of the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right under the Act to deduct any portion from rent otherwise payable.

The Act provides for specific circumstances when a tenant may make deductions from rent payable, such as authorization of a Dispute Resolution Officer, or with the landlord's consent. Having heard from both parties, I find the tenant did not have the

right under the Act to withhold any portion of the rent due to the landlord for June or July 2011.

When a tenant receives a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant has five days to either pay the outstanding rent or dispute the Notice. I was provided disputed verbal testimony that the tenant presented the landlord with payment of the outstanding rent.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the tenant has the burden to prove he presented the landlord with payment of the outstanding rent. The tenant claimed he had a money order as documentary evidence to support his position; however, the tenant had not provided a copy of the money order for this proceeding. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet his burden of proof.

In light of the above, I conclude there is no basis to cancel the Notice to End Tenancy. I provide the landlord with an Order of Possession effective August 14, 2011 or two days after service of the Order upon the tenant, whichever date is later.

With respect to the tenant's request for a rent reduction I find as follows. A landlord is required to repair and maintain a property so that it is suitable for occupation and a landlord must not terminate services and facilities agreed upon. I accept that the landlord was obligated under the terms of the tenancy agreement to provide the tenant with a fridge and that at the beginning of the tenancy he had a regular or full sized fridge.

Where a landlord fails to repair or maintain the rental property or fails to provide services or facilities agreed upon, the tenant may be entitled to compensation. However, any party that makes a claim for compensation for the damages or loss must do whatever is reasonable to minimize their damages or loss pursuant to section 7 of the Act. In order to minimize damages or loss I find it reasonable that the tenant notify the landlord of a repair issue as soon as the tenant notices a repair is necessary.

In this case, it was in dispute as to when the tenant notified the landlord that the fridge stopped working. As outlined above in this decision, the tenant has the burden to prove he notified the landlord in early May 2011 as he claimed. I find the disputed verbal testimony insufficient to prefer the tenant's submission over that of the landlord's;

therefore, I accept that the landlord first became aware of the non-working fridge at the end of May 2011.

The landlord provided the tenant with a bar sized or counter size fridge which was reduced the tenant's loss of refrigeration; however, I find the temporary fridge to be inferior to a full sized fridge. I also accept that the landlord delayed unnecessarily in providing the tenant with the full sized fridge until late July 2011. I find that such a small bar fridge, without a freezer compartment, likely devalued the tenancy.

Considering the tenant submitted he is away from home much of the time and the amount of monthly rent payable, I find it reasonable that the devaluation to the tenancy would approximate \$50.00 per month. However, I find the tenant failed to supply sufficient evidence for me to conclude the tenant lost approximately \$150.00 worth of meat. Therefore, I find the tenant entitled to compensation of \$100.00 (\$50.00 x 2 months).

The tenant did not indicate in his application that there was an issue with the hot water tank; nor, did the tenant provide evidence he notified the landlord about the hot water tank in writing. I find the tenant's lack of written notification of this issue to be consistent with the landlord's submission that she was unaware of an issue with the hot water tank. As indicated above, to minimize any damages or loss, the tenant has the burden to show he notified the landlord of this issue in order to provide the landlord the opportunity to make necessary repairs. Therefore, I do not award the tenant any compensation for lack of hot water.

The tenant did indicate that lack of heat was an issue in making this application; however, I heard that after the tenant complained of lack of heat the landlord provided him with another heater and after that he did not complain again. I find it reasonable to conclude that after the landlord provided the tenant with a second heater, in the absence of further complaints, she was of the belief the issue had been resolved. Therefore, I do not find the tenant entitled to compensation for lack of heat.

I find the tenant's application had some merit; however, in recognition of the limited success I award the tenant \$10.00 of the filing fee he paid for this application.

I have awarded the tenant a total of \$110.00 with this application. Since the tenant is about to end, I provide the tenant with a Monetary Order in the amount of \$110.00 that may be used to offset any Monetary Order the landlord may obtain against the tenant for unpaid rent. To be enforceable the tenant must serve the Monetary Order upon the

landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided with an Order of Possession effective August 14, 2011 or two days after service upon the tenant, whichever date is later.

The tenant has been provided a Monetary Order in the total amount of \$110.00 to serve upon the landlord and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 11, 2011.

Residential Tenancy Branch